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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/445,043	03/20/2000	IAN BAIRD-SMITH	350013-65	9395

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OPPENHEIMER WOLFF & DONNELLY LLP
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MINNEAPOLIS, MN 55402

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3781

MAIL DATE	DELIVERY MODE
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08/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/445,043	Applicant(s) BAIRD-SMITH ET AL.	
	Examiner Robin A. Hylton	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6,8-11,13-18 and 22 is/are pending in the application.
- 4a) Of the above claim(s) 14-18 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6,8-11 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5-29-07</u> . | 6) <input type="checkbox"/> Other: _____ |

39DETAILED ACTION

1. Prosecution on the merits of this application is reopened on claims 1,3,4,6,8-11,13 considered unpatentable for the reasons indicated below: the IDS cites a reference which anticipates and/or renders the instant claims obvious.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1,3,6,9,10, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Sekiguchi et al. (JP 62-122962).

Sekiguchi discloses a container assembly comprising a container 1 having a second cam and follower pair, a flexible membrane 2, an adhesive seal between the flexible membrane and the container, a rigid cap 3 having a resilient deformable member 5 juxtaposed to the flexible membrane, a first cam and follower pair, a laminar member and annular skirt depending from the laminar member, wherein the laminar member is spaced from the flexible membrane by a distance less than the maximum possible extension of the flexible membrane toward the laminar member.

Figure 1 depicts the rigid cap attached to the container with an airspace between the flexible membrane 2 and the rigid cap 3. The fourth paragraph on page 4 discloses the expansion and contraction of the airspace 4 prevents rupture of the flexible membrane. The airspace is contracted and expanded by movement of the flexible membrane. It can be seen that the lowermost point of the laminar member is spaced from the flexible membrane by a

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distance less than the maximum possible extension of the flexible membrane towards the laminar member.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sekiguchi.

Sekiguchi discloses the claimed container assembly except for the resiliently deformable member comprising a foamed material.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the resiliently deformable member of a foamed material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sekiguchi in view of Hardt (US 4,328,905).

Sekiguchi teaches the claimed closure except for a pull tab hingedly attached to the membrane.

Hardt teaches a membrane closure having a pull tab hingedly attached thereto.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a hingedly attached pull tab to the membrane of Sekiguchi. Doing so would provide a graspable member to allow for easy removal of the membrane from a container mouth.

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7. Claims 1,3,4,6,8-10, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hiroshi (JP 6-219464) in view of Sekiguchi.

Hiroshi discloses a container assembly comprising a container 1 having a second cam and follower pair, a flexible membrane 3, an adhesive seal 4 between the flexible membrane and the container, a rigid cap having a resilient deformable member 6 juxtaposed to the flexible membrane, a first cam and follower pair, a laminar member 5 and annular skirt 7 depending from the laminar member. Hiroshi is silent regarding the laminar member being spaced from the flexible membrane by a distance less than the maximum possible extension of the flexible membrane toward the laminar member.

Sekiguchi teaches it is known to provide a container assembly wherein the laminar member is spaced from the flexible membrane by a distance less than the maximum possible extension of the flexible membrane toward the laminar member.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of providing the laminar member being spaced from the flexible membrane by a distance less than the maximum possible extension of the flexible membrane toward the laminar member. Doing so provides a container liner seal that is less likely to rupture do to pressure build-up within the sealed container.

Regarding claim 4, the outer portion 2 of the can comprising the screw threads has an upper edge that is considered to be a flange.

Regarding claim 9, Hiroshi teaches the claimed invention except for the flexible membrane being made of a metal foil. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the flexible membrane of metal foil, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Hardt.

Hiroshi teaches the claimed closure except for a pull tab hingedly attached to the membrane.

Hardt teaches a membrane closure having a pull tab hingedly attached thereto.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a hingedly attached pull tab to the membrane of Hiroshi. Doing so would provide a graspable member to allow for easy removal of the membrane from a container mouth.

Conclusion

9. Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on May 29, 2007 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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10. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

12. In order to reduce pendency and avoid potential delays, Group 3720/80 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

13. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

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Signature_____

Date_____

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH
August 14, 2007

/Robin A. Hylton/
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GAU 3781